

Personal Status Litigation Act

(Act No. 109 of July 16, 2003)

Chapter I General Provisions

Section 1 General Rules (Articles 1 to 3)

Section 2 Court

Subsection 1 Jurisdiction (Articles 4 to 8)

Subsection 2 Counselor (Articles 9 to 11)

Section 3 Parties (Articles 12 to 15)

Section 4 Court Costs (Article 16)

Section 5 Court Proceedings (Articles 17 to 27)

Section 6 Auxiliary Provisions (Articles 28 to 30)

Chapter II Special Provisions for Marital Relationship Litigation

Section 1 Jurisdiction (Article 31)

Section 2 Ancillary Disposition, etc. (Articles 32 to 36)

Section 3 Settlement and Waiver and Acknowledgement of Claim (Article 37)

Section 4 Assurance of Performance (Articles 38 to 40)

Chapter III Special Provisions for Litigation Concerning a Natural Parent-Child Relationship (Articles 41 to 43)

Chapter IV Special Provisions for Adoption-Related Litigation (Article 44)

Supplementary Provisions

Chapter I General Provisions

Section 1 General Rules

(Purpose)

Article 1 This Act shall provide special provisions, etc. under the Code of Civil Procedure (Act No. 109 of 1996) with regard to the procedures for personal status litigation.

(Definition)

Article 2 The term "personal status litigation" as used in this Act means litigation related to the following actions and other actions seeking the formation, or a declaration of the existence, of family relationships (hereinafter referred to as "actions concerning personal status"):

- (i) actions seeking the invalidation or revocation of a marriage, actions seeking a divorce, actions seeking the invalidation or revocation of a divorce by agreement, and actions seeking a declaratory judgment on the existence of a marital relationship;

- (ii) actions to rebut the presumption of a child in wedlock, actions seeking filiation, actions seeking the invalidation or revocation of an acknowledgment of parentage, actions seeking a determination of paternity pursuant to the provisions of Article 773 of the Civil Code (Act No. 89 of 1896), and actions seeking a declaratory judgment on the existence of a natural parent-child relationship; and
- (iii) actions seeking the invalidation or revocation of adoption, actions seeking the dissolution of an adoptive relationship, actions seeking the invalidation or revocation of the dissolution of an adoptive relationship by agreement, and actions seeking a declaratory judgment on the existence of an adoptive parent-child relationship.

(Rules of the Supreme Court)

Article 3 In addition to what is provided for in this Act, the necessary matters concerning procedures for personal status litigation shall be prescribed by the Rules of the Supreme Court.

Section 2 Court

Subsection 1 Jurisdiction

(Jurisdiction over an Action Concerning Personal Status)

- Article 4 (1) An action concerning personal status shall be under the exclusive jurisdiction of the family court that has jurisdiction over the place where the party to the family relationship concerned with said action has a general venue, or the place where such party had a general venue at the time of his/her death.
- (2) If the court with jurisdiction is not determined under the provisions of the preceding paragraph, the action concerning personal status shall be under the exclusive jurisdiction of the family court that has jurisdiction over the place specified by the Rules of the Supreme Court.

(Jurisdiction over Joint Claims)

Article 5 Where two or more claims seeking the formation or declaration of the existence of two or more family relationships are to be brought in a single action concerning personal status filed by two or more persons, or filed against two or more persons, notwithstanding the provisions of the preceding Article, such an action may be filed with the family court that has jurisdiction over the single claim pursuant to the provisions of the preceding Article; provided, however, that this shall be limited to the cases specified in the first sentence of Article 38 of the Code of Civil Procedure.

(Disposition by the Family Court before which the Conciliation Case was

Pending, without Jurisdiction)

Article 6 Even if a family court finds that all or part of a personal status litigation is not under its jurisdiction, if the case is related to conciliation filed pursuant to the provisions of Article 257, paragraph (1) of the Family Case Proceeding Act (Act No. 52 of 2011) related to the personal status litigation and pending before the family court, and the family court finds it particularly necessary in light of the progress of the mediation, the opinions of the parties and other circumstances, the family court may itself conduct proceedings or make judicial decisions for all or part of the personal status litigation upon petition or by its own authority, notwithstanding the provisions of Article 16, paragraph (1) of the Code of Civil Procedure.

(Transfer for Avoidance of Delay, etc.)

Article 7 Even if personal status litigation is under the jurisdiction of a family court, the family court may transfer all or part of the personal status litigation to another court with jurisdiction if it finds it necessary to avoid a substantial delay in the litigation or to seek equity between the parties in light of the addresses of the parties or a witness to be examined, upon petition or by its own authority.

(Transfer of Litigation Concerning Related Claims)

Article 8 (1) Where litigation seeking compensation for damages is pending in a court of first instance and the damages arise from the facts which constitute the statement of claims for personal status litigation pending in a family court, the court of first instance may, when it finds reasonable, upon petition, transfer the litigation seeking compensation for damages to the family court. In this case, the family court that receives the transfer may conduct a trial or make judicial decisions regarding said litigation seeking compensation for damages.

(2) A family court that receives a transfer pursuant to the provision of the preceding paragraph shall order consolidation of the oral arguments for both the case pertaining to the personal status litigation under said paragraph and the case pertaining to the litigation seeking compensation for damages with regard to such transfer.

Subsection 2 Counselor

(Counselor)

Article 9 (1) When a family court finds it necessary, it may have a counselor attend a trial or an attempt of settlement, and hear his/her opinions.

(2) There shall be more than one counselor for each case.

- (3) A counselor shall be designated by the family court for each case from among persons appointed in advance by the family court every year.
- (4) The qualifications and number of persons to be appointed pursuant to the preceding paragraph and other matters necessary for the appointment pursuant to said paragraph shall be specified by the Rules of the Supreme Court.
- (5) A counselor shall be paid travel expenses, a daily allowance and accommodation charges at the amount specified by the Rules of the Supreme Court.

(Disqualification of or Challenge to Counselors)

Article 10 (1) The provisions of Articles 23 to 25 of the Code of Civil Procedure shall apply mutatis mutandis to counselors.

- (2) Where a petition to disqualify or challenge a counselor is submitted, the counselor may not participate in the case relating to such petition until an order on the petition becomes final and binding.

(Sanctions for Unlawful Disclosure of Confidential Information)

Article 11 If a counselor or former counselor divulges any personal secrets which came to his/her knowledge in relation to matters he/she has handled in the course of his/her duties, he/she shall be punished by imprisonment with work for not more than one year or a fine of not more than 500,000 yen.

Section 3 Parties

(Standing as a Defendant)

- Article 12 (1) For actions concerning personal status filed by either party to the family relationship related to such action, the other party to said family relationship shall stand as the defendant except as otherwise provided.
- (2) For actions concerning personal status filed by a person other than a party to the family relationship related thereto, both of the parties to the family relationship shall stand as defendants, and if one of the parties has died, the other party shall stand as the defendant, except as otherwise provided.
 - (3) Where the person who is to stand as the defendant in the relevant action pursuant to the provisions of the preceding two paragraphs has died and there is no other person to stand as a defendant, the public prosecutor shall stand as the defendant.

(Capacity to Sue or Be Sued in Personal Status Litigation, etc.)

Article 13 (1) With regard to procedural acts in court in personal status litigation, the provisions of Article 5, paragraphs (1) and (2), Article 9, Article

13 and Article 17 of the Civil Code and Article 31, Article 32, paragraph (1) (including cases where applied mutatis mutandis pursuant to Article 40, paragraph (4) of the Code of Civil Procedure) and Article 32, paragraph (2) of the Code of Civil Procedure shall not apply.

- (2) Where a person's capacity to engage in procedural acts has been limited and he/she intends to engage in procedural acts under the preceding paragraph, the presiding judge may, if he/she finds it necessary, appoint an attorney as said person's counsel upon petition.
- (3) Where a person's capacity to engage in procedural acts has been limited and he/she does not file a petition under the preceding paragraph, the presiding judge may order that an attorney be appointed as said person's counsel or appoint an attorney as said person's counsel by its own authority.
- (4) The court shall determine a reasonable amount of remuneration to be paid by a person whose capacity to engage in procedural acts has been limited to the attorney appointed as his/her counsel by the presiding judge pursuant to the provisions of the preceding two paragraphs.

Article 14 (1) Where a person who is to stand as the plaintiff or defendant in an action concerning personal status is an adult ward, his/her guardian may sue or be sued on his/her behalf; provided, however, that this shall not apply to cases where such guardian is the other party to the litigation related to such action.

- (2) In the case referred to in the proviso to the preceding paragraph, the supervisor of the guardian of an adult may sue or be sued on behalf of the adult ward.

(Intervention by Interested Parties)

Article 15 (1) In personal status litigation where the public prosecutor stands as the defendant, if the court finds it necessary to have a third party whose inheritance rights may be harmed as a result of the litigation (hereinafter referred to as an "interested party") intervene in the personal status litigation, the court may, in order for such interested party to assist the defendant, by an order, have such interested party intervene in the personal status litigation.

- (2) Prior to issuing an order under the preceding paragraph, the court shall hear the opinions of the parties and interested parties.
- (3) With regard to interested parties who have intervened in personal status litigation where the public prosecutor stands as the defendant based on Article 43, paragraph (1) of the Code of Civil Procedure or an order under paragraph (1) of this Article, the provision of Article 45, paragraph (2) of the Code of Civil Procedure shall not apply.
- (4) The provisions of Article 40, paragraphs (1) through (3) of the Code of Civil

Procedure (with regard to paragraph (3) of said Article, limited to the portion concerning the suspension of court proceedings) shall apply mutatis mutandis with respect to interested parties under the preceding paragraph.

(5) The court may revoke an order under paragraph (1) of this Article.

Section 4 Court Costs

Article 16 (1) Where a public prosecutor is a party to personal status litigation, court costs to be borne by the public prosecutor pursuant to the provisions of Articles 61 through 66 of the Code of Civil Procedure shall be borne by the national treasury.

(2) Where interested parties have intervened in personal status litigation where the public prosecutor stands as the defendant based on an application under Article 43, paragraph (1) of the Code of Civil Procedure or an order under paragraph (1) of the preceding Article, the provisions of Articles 61 through 66 of said Code shall apply mutatis mutandis with respect to the bearing of court costs.

Section 5 Court Proceedings

(Consolidation of Related Claims, etc.)

Article 17 (1) Notwithstanding the provisions of Article 136 of the Code of Civil Procedure, both a claim for personal status litigation and a claim concerning compensation for damages arising from the facts which constitute the statement of the claim may be brought in a single action. In this case, the family court that has jurisdiction over a claim pertaining to the personal status litigation may conduct trials or render judgments in the litigation pertaining to the claim concerning compensation for damages.

(2) In addition to what is provided for in the preceding paragraph, an action regarding a claim seeking compensation for damages arising from the facts which constitute the statement of claims for personal status litigation may be filed with a family court before which such personal status litigation is already pending. In this case, the provision of the second sentence of the preceding paragraph shall apply mutatis mutandis.

(3) The provision of Article 8, paragraph (2) shall apply mutatis mutandis to both the case pertaining to personal status litigation as defined under the preceding paragraph and the case pertaining to a claim concerning compensation for damages under the preceding paragraph.

(Amendment of Claims and Counterclaims)

Article 18 Notwithstanding the provisions of Article 143, paragraphs (1) and (4),

Article 146, paragraph (1) and Article 300 of the Code of Civil Procedure, with regard to the procedures for personal status litigation, a plaintiff may amend a claim or statement of claims and a defendant may file a counterclaim until the conclusion of the oral arguments in the first or second instance.

(Exclusion from Application of the Provisions of the Code of Civil Procedure)

Article 19 (1) With regard to court proceedings of personal status litigation, the provisions of Article 157, Article 157-2, Article 159, paragraph (1), Article 207, paragraph (2), Article 208, Article 224, Article 229, paragraph (4) and Article 244 of the Code of Civil Procedure, and the portion of the provisions of Article 179 of said Code related to the facts admitted by the parties in court shall not apply.

(2) With regard to the subject matter of the suit in personal status litigation, the provisions of Articles 266 and 267 of the Code of Civil Procedure shall not apply.

(Fact Finding and Examination of Evidence by the Court's Own Authority)

Article 20 In personal status litigation, the court may take facts which are not asserted by the parties into consideration and examine evidence by its own authority. In this case, the court shall hear the opinions of the parties regarding such facts and the results of the examination of the evidence.

(Order for a Party to Appear, etc.)

Article 21 (1) In personal status litigation, where a court intends to examine to a party him/herself, the court may order the party to appear on the date for the proceedings.

(2) The provisions of Articles 192 through 194 of the Code of Civil Procedure shall apply mutatis mutandis to the case where a party ordered to appear pursuant to the provision of the preceding paragraph does not appear without justifiable grounds.

(Suspension on Open Examination of Parties, etc.)

Article 22 (1) In personal status litigation, a court may, by an order, examine a party or the statutory agent thereof (hereinafter collectively referred to as "party, etc." in this paragraph and the following paragraph) in connection with matters which are to be the basis for the formation or declaration of the existence of a family relationship which is the subject matter of said personal status litigation and which relate to a material secret regarding the private life of the party, etc. without opening it to the public, where the court finds unanimously that the party, etc. or witness cannot make sufficient statements on said matters as it is obvious that doing so would be substantially

detrimental to the social life of the party, etc. or witness, and where, in the absence of such a statement, the court cannot make an appropriate judicial decision on the formation or the declaration of the existence of the family relationship from other evidence.

- (2) Prior to issuing an order under the preceding paragraph, a court shall hear the opinions of the party, etc. and the witness.
- (3) Where a court carries out an examination of relevant matters without opening it to the public pursuant to the provision of paragraph (1), it shall make a statement to that effect along with the reason therefor before having the public leave the court. When the examination of said matters has been completed, the court shall allow the public to re-enter the court.

(Participation of Public Prosecutors)

Article 23 (1) In personal status litigation, a court, authorized judge, or commissioned judge may, when finding it necessary, have the public prosecutor attend the litigation proceedings on the date for the proceedings and state his/her opinions on the case.

- (2) Where the public prosecutor attends the litigation proceedings on the date for the proceedings pursuant to the provisions of the preceding paragraph, he/she may assert facts or offer evidence.

(Scope of Persons Subject to the Effect of Final and Binding Judgments)

Article 24 (1) Notwithstanding the provision of Article 115, paragraph (1) of the Code of Civil Procedure, a final and binding judgment of the personal status litigation shall be effective against a third party.

- (2) Where an action seeking the invalidation of a marriage due to violation of the provision of Article 732 of the Civil Code is filed, a final and binding judgment that dismisses the claim shall be effective against a spouse from a previous marriage only if said spouse has intervened in the litigation pertaining to the claim, notwithstanding the provisions of the preceding paragraph.

(Prohibition on the Filing of Actions Concerning Personal Status after a Judgment Becomes Final and Binding)

Article 25 (1) After a judgment in personal status litigation (excluding judgments dismissing actions as unlawful; the same shall apply in the following paragraph) becomes final and binding, the plaintiff may not file any action concerning personal status with regard to the same family relationship based on facts which could have been asserted by amending the claim or the statement of claim in said personal status litigation.

- (2) After a judgment in personal status litigation becomes final and binding, the defendant may not file any action concerning personal status with regard to

the same family relationship based on facts which could have been asserted by filing a counterclaim in said personal status litigation.

(Discontinuation and Succession of Actions)

Article 26 (1) Where both of the parties to a family relationship concerned with an action regarding personal status pursuant to the provision of Article 12, paragraph (2) stand as defendants, and one of the parties dies, the other party shall stand as the defendant. In this case, the provision of Article 124, paragraph (1), item (i) of the Code of Civil Procedure shall not apply.

(2) In the case referred to in Article 12, paragraph (1) or (2), if all of the defendants die, the public prosecutor shall stand as the defendant.

(Termination of Personal Status Litigation Upon the Death of the Parties)

Article 27 (1) Where the plaintiff dies while personal status litigation is pending, said personal status litigation shall be automatically terminated, except as otherwise provided for.

(2) Where the defendant dies while personal status litigation for a divorce, for rebutting the presumption of a child in wedlock, or for the dissolution of an adoptive relationship is pending, such personal status litigation shall be automatically terminated, notwithstanding the provisions of paragraph (2) of the preceding Article.

Section 6 Auxiliary Provisions

(Notice of Pendency to Interested Parties)

Article 28 The court shall notify interested parties of the pendency of litigation where an action concerning personal status has been filed and where an interested party is a child or any other person specified by the Rules of the Supreme Court as appropriate where an action for filiation has been filed after the death of the father; provided, however, that this shall be limited to cases in which the name and domicile or residence of the interested party is confirmed in the case record.

(Application of the Code of Civil Procedure)

Article 29 For purposes of the application of the provisions of the Code of Civil Procedure in the procedures for personal status litigation, the phrase "A judicial decision of the disqualification of or a challenge to a judge who is a member of a panel or a single judge of a district court shall be made by an order of the court to which the judge belongs, and a judicial decision of the disqualification of or a challenge to a judge of a summary court shall be made by an order of the district court that has jurisdiction over the location of the

summary court" in Article 25, paragraph (1) of said Code shall be deemed to be replaced with "A judicial decision of the disqualification of or a challenge to a judge who is a member of a panel or a single judge of a family court shall be made by an order of the court to which the judge belongs"; the term "district court" in Article 25, paragraph (2), Article 132-5, paragraph (1), Article 185, Article 235, paragraphs (2) and (3), Article 269, paragraph (1), Article 329, paragraph (3), and Article 337, paragraph (1) of said Code shall be deemed to be replaced with "family court"; the phrase "by a district court as the court of first instance or a final judgment made by a summary court" in Article 281, paragraph (1) of said Code shall be deemed to be replaced with "by a family court"; the phrase "with the Supreme Court against a judgment made by a district court, and may be filed directly with a high court against a judgment made by a summary court" in Article 311, paragraph (2) of said Code shall be deemed to be replaced with "with the Supreme Court against a judgment made by a family court;" and the phrase "a district court or summary court" in Article 336, paragraph (1) of said Code shall be deemed to be replaced with "a family court."

(Special Provisions for Jurisdiction over Temporary Restraining Orders)

Article 30 (1) Notwithstanding the provisions of Article 12, paragraph (1) of the Civil Provisional Remedies Act (Act No. 91 of 1989), a temporary restraining order case where personal status litigation is the merits shall be under the jurisdiction of the court with jurisdiction over the merits of the case, or the family court that has jurisdiction over the location of the property to be provisionally seized or the subject matter in dispute.

(2) Where both a claim for personal status litigation and a claim concerning compensation for damages arising from the facts which constitute the statement of that claim may be brought in a single action, a petition for a temporary restraining order for the claim concerning compensation for damages may be filed with the family court that has jurisdiction over the location of the property to be provisionally seized or the subject matter in dispute.

Chapter II Special Provisions for Marital Relationship Litigation

Section 1 Jurisdiction

Article 31 Where the parties to a marriage pursuing an action for the revocation thereof or for a divorce have any child(ren) who have not yet attained the age of majority, for the purpose of the application of the provisions of Article 6 and Article 7 to the litigation in connection with such action, the family court shall take into consideration the domicile or residence of such child(ren) .

Section 2 Ancillary Disposition, etc.

(Juridical Decision on Ancillary Disposition, etc.)

- Article 32 (1) The court shall, upon petition, in a judgment upholding a claim relating to an action seeking the revocation of a marriage or a divorce filed by either husband or wife against his/her spouse, make a judicial decision designating a person to have custody over their child(ren) or any other disposition regarding custody of the child(ren), a disposition regarding the distribution of property or regarding the ratios for the division of the amount of standard remuneration, etc. (meaning a disposition under the provisions of Article 78-2, paragraph (2) of the Employees' Pension Insurance Act (Act No. 115 of 1954), Article 93-5, paragraph (2) of the National Public Officers Mutual Aid Association Act (Act No. 128 of 1958) (including cases where applied mutatis mutandis pursuant to Article 25 of the Private School Personnel Mutual Aid Association Act (Act No. 245 of 1953)) or Article 105, paragraph (2) of the Local Public Officers, etc. Mutual Aid Association Act (Act No. 152 of 1962)) (hereinafter collectively referred to as an "ancillary disposition").
- (2) In the case referred to in the preceding paragraph, the court may, in the judgment set forth in said paragraph, order either party to deliver the child(ren), pay compensation, provide any other economic benefits or any other benefits.
- (3) The provisions of the preceding paragraph shall apply mutatis mutandis to cases where the court makes a judicial decision on the designation of a person who will have parental authority in a judgment upholding a claim relating to an action seeking the revocation of a marriage or for divorce.
- (4) When making a judicial decision on the designation of a person who will have custody of a child(ren) or any other disposition regarding the custody of a child(ren) as set forth in paragraph (1) or a judicial decision on the designation of a person who will have parental authority as set forth in the preceding paragraph, the court shall hear the child(ren)'s statements if the child(ren) is at least 15 years of age.

(Examination of Facts)

- Article 33 (1) When making a judicial decision on an ancillary disposition under paragraph (1) of the preceding Article or on the designation of a person who will have parental authority under paragraph (3) of said Article, the court may conduct an examination of the facts.
- (2) When the court finds it reasonable, it may order the members of a panel, or commission the family court or summary court, to conduct an examination of the facts as provided in the preceding paragraph (hereinafter simply referred

to as an "examination of the facts").

- (3) Where the authorized judge or commissioned judge conducts an examination of the facts pursuant to the provisions of the preceding paragraph, the duties of the court and of the presiding judge shall be performed by such judge.
- (4) When the court conducts an examination of the facts by setting a hearing date and hearing one party's statements, the other party may attend the hearing; provided, however, that this shall not apply to cases where the other party's attendance risks hindering the examination of the facts.
- (5) The examination of the facts shall not be open to the public; provided, however, that the court may permit observation by a person whom it considers to be appropriate.

(Examination of the Facts by Family Court Research Law Clerks)

Article 34 (1) The court may have family court research law clerks conduct examinations of the facts.

- (2) In urgent circumstances, the presiding judge may have family court research law clerks conduct examinations of the facts.
- (3) A family court research law clerk shall report the results of the examination of the facts in writing or orally to the court.
- (4) A family court research law clerk may attach his/her opinion to the report under the preceding paragraph.

(Disqualification of Family Court Research Law Clerks)

Article 34-2 (1) The provisions of Article 23 and Article 25 of the Code of Civil Procedure (excluding the portions concerning challenge) shall apply mutatis mutandis to family court research law clerks.

- (2) Where a petition to disqualify a family court research law clerk is submitted, the family court research law clerk may not participate in the case relating to such petition until an order on the petition becomes final and binding.

(Inspection, etc. of the Portion related to the Examination of the Facts)

Article 35 (1) A request for inspection, copying, issuance or reproduction of an authenticated copy, transcript or extract, or the reproduction of the portions of the case records as provided in Article 91, paragraph (1), (3) or (4) of the Code of Civil Procedure (hereinafter referred to as an "inspection, etc." in this Article) related to the examination of the facts (hereinafter referred to as the "portion related to the examination of the facts" in this Article) may only be filed with the court's permission pursuant to the provisions of the following paragraph or paragraph (3).

- (2) Where a party files a petition for permission for inspection, etc. of the portion related to the examination of the facts, the court shall permit such inspection,

etc.; provided, however, that with regard to a portion related to the examination of the facts for which the following risks are found after an inspection, etc. , the court may permit such inspection, etc. only when it finds appropriate:

- (i) a risk of causing harm to the interests of a child(ren) who has not yet attained the age of majority where the parties have such child(ren);
 - (ii) a risk of causing harm to the private life or business of a party or a third party; or
 - (iii) a risk of disclosing significant secrets regarding the private life of a party or a third party, thereby causing considerable interference with the social life of the party or third party or substantial harm to the reputation of such parties.
- (3) Where a third party makes a prima facie showing of his/her interest and files a petition for permission for an inspection, etc. of the portion related to the examination of the facts, the court may permit such inspection, etc. if it finds it to be appropriate.
- (4) An immediate appeal may be filed against a judicial decision to dismiss a petition under paragraph (2).
- (5) If it is found that the immediate appeal under the provisions of the preceding paragraph has been filed for the purpose of unjustly delaying personal status litigation procedures, the court of first instance shall dismiss such immediate appeal.
- (6) An immediate appeal may be filed against an order issued under the provisions of the preceding paragraph.
- (7) No appeal may be entered against a judicial decision to dismiss a petition under paragraph (3).

(Judicial Decision on Ancillary Disposition in Cases of Termination of Marriage Other than by Judgment)

Article 36 Where a marriage that is the subject of an action seeking a divorce or the revocation of marriage has been terminated other than by a judgment in the litigation pertaining to such action, and where a petition for ancillary disposition has already been filed, if the matters in connection with such ancillary disposition have not been specified by the time the marriage is terminated, the court in charge of the case shall conduct the trial and make a judicial decision regarding such ancillary disposition.

Section 3 Settlement and Waiver or Acknowledgement of Claim

Article 37 (1) Notwithstanding the provisions of Article 19, paragraph (2), with regard to a settlement (limited to a settlement by which a divorce is effected;

hereinafter the same shall apply in this Article) and the waiver or acknowledgement of a claim in litigation in connection with an action seeking divorce, the provisions of Article 266 (excluding the portion related to the acknowledgement of a claim in paragraph (2)) and Article 267 of the Code of Civil Procedure shall apply; provided, however, that, with regard to the acknowledgement of claims, this shall be limited to cases in which a judicial decision on the ancillary disposition under Article 32, paragraph (1) or on the designation of the person who will have parental authority under paragraph (3) of said Article is not required.

- (2) A settlement under the provisions of Article 264 and Article 265 of the Code of Civil Procedure may not be effected in litigation in connection with an action seeking divorce.
- (3) The parties under Article 170, paragraph (4) of the Code of Civil Procedure may not effect a settlement or acknowledge a claim on the date provided in paragraph (3) of said Article in litigation in connection with an action seeking divorce.

Section 4 Assurance of Performance

(Recommendation of Performance)

- Article 38 (1) With regard to an obligation imposed by a judicial decision under the provisions of Article 32, paragraph (1) or (2) (including cases where applied mutatis mutandis pursuant to paragraph (3) of said Article; the same shall apply hereinafter), the family court that made such judicial decision (in cases where an appellate court made such judicial decision, the family court which is the court of first instance) may examine the status of the performance of such obligation and recommend that the obligor perform such obligation when requested by the right holder.
- (2) The family court under the preceding paragraph may commission another family court to conduct the examination or make the recommendation under the provisions of said paragraph.
 - (3) The family court under paragraph (1) or the family court that has been commissioned under the preceding paragraph may have a family court research law clerk conduct the examination or make the recommendation under the provisions of paragraph (1).
 - (4) The provisions of the preceding three paragraphs shall apply mutatis mutandis to the performance of the obligation which may be imposed by a judicial decision under Article 32, paragraph (1) or (2) and which has been specified in a settlement reached in litigation in connection with an action seeking divorce or the revocation of marriage.

(Order of Performance)

Article 39 (1) A family court that made a judicial decision under the provision of Article 32, paragraph (2) imposing the obligation to pay money or provide other economic benefits (in cases where an appellate court has made the judicial decision, the family court which is the court of first instance) on a person who then neglects to perform said obligation may, upon the petition of the right holder and where it finds it appropriate, order the obligor to perform and specify a reasonable period for performance. In this case, the order shall be issued for all or part of the obligation which the obligor has neglected to perform by the time of such order.

(2) The family court under the preceding paragraph shall hear a statement from the obligor when ordering performance of the obligation pursuant to the provisions of said paragraph.

(3) The provisions of the preceding two paragraphs shall apply mutatis mutandis to the obligation to pay money or provide other economic benefits which may be imposed by a judicial decision under the provisions of Article 32, paragraph (2) and in a settlement reached in litigation in connection with an action seeking the revocation of marriage or divorce.

(4) If the person ordered to perform the obligation pursuant to the provisions of paragraph (1) (including cases where applied mutatis mutandis pursuant to the preceding paragraph) does not comply with the order without justifiable grounds, the family court that ordered performance of such obligation shall punish such person with a non-criminal fine of not more than 100,000 yen by order.

(5) An immediate appeal may be filed against an order under the preceding paragraph.

(6) The provisions of Article 189 of the Code of Civil Procedure shall apply mutatis mutandis to an order under paragraph (4).

Article 40 Deleted

Chapter III Special Provisions for Litigation Concerning a Natural Parent-Child Relationship

(Parties to an Action to Rebut the Presumption of a Child in Wedlock)

Article 41 (1) When a husband dies before the birth of a child, or dies without filing an action to rebut the presumption of a child in wedlock within the period specified in Article 777 of the Civil Code, a person whose right of inheritance is infringed by such child or the husband's other relatives by blood within the third degree of kinship may file an action to rebut the presumption of a child in wedlock. In this case, such an action shall be filed within one year

from the day on which the husband died.

- (2) Where a husband dies after filing an action to rebut the presumption of a child in wedlock, a person permitted to file an action to rebut the presumption of a child in wedlock pursuant to the provision of the preceding paragraph may take over the court proceedings within six months from the day of the husband's death. In this case, the provision of the second sentence of Article 124, paragraph (1) of the Code of Civil Procedure shall not apply.

(Parties to an Action Seeking Filiation, etc.)

Article 42 (1) In the case of an action seeking filiation, the father or mother shall stand as the defendant, and after the father or mother have died, the public prosecutor shall stand as the defendant.

- (2) The provisions of Article 26, paragraph (2) shall apply *mutatis mutandis* where a father or mother stands as the defendant pursuant to the provisions of the preceding paragraph and such father or mother then dies.
- (3) Where a child dies after filing an action seeking filiation, the child's lineal descendant or statutory agent may take over the court proceedings after the period specified in the proviso to Article 787 of the Civil Code has elapsed and within six months from the day on which the child died. In this case, the provision of the second sentence of Article 124, paragraph (1) of the Code of Civil Procedure shall not apply.

(Parties to an Action seeking Determination of Paternity, etc.)

Article 43 (1) A child, mother, or the spouse or previous spouse of the mother may file an action seeking the determination of paternity pursuant to the provision of Article 773 of the Civil Code.

- (2) In the action under the preceding paragraph to be filed by one of the persons listed in the following items, the persons specified in the respective items shall stand as the defendant, and after such persons die, the public prosecutor shall stand as the defendant:
 - (i) the child or mother: the spouse and previous spouse of the mother (after the death of one such current/former spouse, the other spouse);
 - (ii) the spouse of the mother: the previous spouse of the mother; or
 - (iii) the previous spouse of the mother: the spouse of the mother.
- (3) The provisions of Article 26 shall apply *mutatis mutandis* where the persons specified in the items of the preceding paragraph stand as defendants pursuant to the provisions of the preceding paragraph and where such persons then die.

Chapter IV Special Provisions regarding Adoption-Related Litigation

Article 44 The provisions of Article 37 (excluding the proviso to paragraph (1))

shall apply mutatis mutandis to the settlement (excluding the settlement by which the adoptive relationship is dissolved) of an action as well as the waiver or acknowledgement of a claim in litigation in connection with an action seeking the dissolution of an adoptive relationship.